



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R08-OAR-2020-0516; FRL-10015-82-Region 8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; South Dakota; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a Clean Air Act (CAA or the “Act”) section 111(d) state plan submitted by the South Dakota Department of Environment and Natural Resources (DENR or the “Department”) on January 3, 2020. This plan was submitted to fulfill the requirements of the CAA and is responsive to the EPA’s promulgation of Emission Guidelines and Compliance Times for existing municipal solid waste (MSW) landfills. The South Dakota state plan establishes performance standards and other operating requirements for existing MSW landfills within the State of South Dakota and provides for the implementation and enforcement of those standards and requirements by the Department.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2020-0516, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4 p.m., excluding federal holidays and facility closures.

FOR FURTHER INFORMATION CONTACT: Gregory Lohrke, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-TRM, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6396, lohrke.gregory@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

On August 29, 2016, the EPA finalized revised Standards of Performance (NSPS) for new MSW landfills and Emission Guidelines and Compliance Times (EG) for existing MSW landfills in 40 CFR part 60, subparts XXX and Cf, respectively. See 81 FR 59331 and 59313. These rulemaking actions were taken in accordance with section 111 of the CAA. Section 111(d) of the Act requires the EPA establish procedures for a state to submit a plan to the Agency that establishes standards of performance for any ‘existing’ source for any air pollutant, (1) for which air quality criteria have not been issued or which is not included on a list published under CAA section 108, or emitted from a source category which is regulated under CAA section 112, but (2) to which a new source performance standard under section 111(b) would apply if such existing source were a ‘new’ source. The EPA established general provisions for submittal of state plans for 111(d) sources in 40 CFR part 60, subpart B and has recently promulgated revised general provisions for CAA 111(d) state plans in Subpart Ba of that same Part and Title of the CFR. See 84 FR 32575. State plan submittals for CAA section 111(d) sources must be consistent with the requirements of these general provisions and also establish performance standards and other requirements at least as stringent as those established by the relevant EG as published in 40 CFR part 60. Upon state plan submittal, the EPA reviews a state’s plan for consistency with the requirements of the general provisions and specific EG. If the state plan is complete and approvable with reference to these requirements, the Agency notifies the public, promulgates the plan in 40 CFR part 62 and delegates implementation and enforcement of the standards and requirements of the EG to the state under the terms of the state plan as published in the CFR. Today’s action concerns the completeness and approvability of South Dakota’s CAA section 111(d) state plan for existing MSW landfills.

Under the new Ba implementing regulations and Section 111(d), state plan submittal must meet the completeness requirements of 40 CFR part 60, Subpart Ba, sections 60.23a and 60.27a(g). Section 60.27a(g) states that: “Any plan or plan revision that a State submits to the EPA, and that has not been determined by the EPA by the date 6 months after receipt of the submission to have failed to meet the minimum criteria, shall on that date be deemed by operation of law to meet such minimum criteria.” 40 CFR 60.27a(g)(1).

The Secretary of the South Dakota DENR submitted a final CAA section 111(d) state plan for existing MSW landfills on January 3, 2020 in response to the August 29, 2016 promulgation, mentioned above in this preamble, of the EG for such designated facilities at 40 CFR part 60, subpart Cf. Six months have passed since the date of the plan submission. Therefore, the plan is deemed to have met the completeness criteria in 40 CFR 60.27a(g).

II. Summary and Analysis of the Plan Submittal

The EPA has reviewed the South Dakota 111(d) plan submittal in the context of the plan completeness and approvability requirements found in 40 CFR part 60, subparts B, Ba and Cf, and part 62, subpart A. The EPA is proposing with this action to determine that the submitted section 111(d) plan meets the above cited requirements. The South Dakota state plan submittal package includes all materials necessary to be deemed administratively and technically complete according to the criteria of 40 CFR 60.27a(g). South Dakota has chosen to author a state plan document and provide all implementation and enforcement authority for all state plan requirements through revisions to the Administrative Rules of South Dakota (ARSD). Specifically, the State has appropriately incorporated all EG performance standards and other source requirements in ARSD article 74:36, section 01:19 and sections 07:94—145. Both the State plan document, the relevant ARSD sections, and all other relevant plan submittal materials

may be found in the docket for this action. Necessary State legal and enforcement authorities required for plan approval are located elsewhere in South Dakota statute, rules and regulations and have been reviewed and approved of by the EPA in the course of prior CAA section 111(d) or 111(d)/129 state plan approvals. See 40 CFR 62.10350—10362. Following the EPA’s review of the submittal materials, the Agency finds the State plan package to be approvable according to all plan requirements.

In this action, EPA is proposing to incorporate by reference (IBR) Article 74:36, Chapter 1, section 19 and Chapter 7, sections 94—145 of the ARSD, which became effective in the State of South Dakota on November 25, 2019. Analysis of the submitted plan’s completeness and approvability, with reference to the relevant general and source category specific plan requirements of 40 CFR part 60, subparts B, Ba and Cf, and a detailed explanation of the rationale supporting this proposed approval is available in the Technical Support Document (TSD) in the docket of this proposed rule.

III. Proposed Action

The EPA is proposing to approve the South Dakota section 111(d) state plan for MSW landfills pursuant to 40 CFR part 60, subparts B, Ba, and Cf. Therefore, the EPA is proposing to amend 40 CFR part 62, subpart QQ to reflect this approval action. This approval is based on the rationale provided in section II of this preamble and discussed in detail in the TSD associated with this rulemaking action. The scope of the proposed approval is limited to the provisions of 40 CFR parts 60 and 62. The EPA’s proposed approval of the South Dakota plan is limited to those landfills that meet the criteria established in 40 CFR part 60, subpart Cf.

The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR 60.30f(c).

IV. Incorporation by Reference

In this document, the EPA is proposing to incorporate by reference DENR rules regarding MSW landfills discussed in section II of this preamble in accordance with the requirements of 1 CFR 51.5. The EPA has made, and will continue to make, these materials available through the docket for this action, EPA-R08-OAR-2020-0516, at <https://www.regulations.gov>, and at the EPA Region VIII Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

In reviewing state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because 111(d) plan approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the South Dakota state plan for existing MSW landfills is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 23, 2020.

Gregory Sopkin,
Regional Administrator,
EPA Region 8.

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